

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Hypertherm, Inc.

v.

Civil No. 05-cv-373-JD

American Torch Tip Company

Procedural Order

The court's order on claim construction in this patent infringement case issued on January 29, 2008. After motions for reconsideration and for an interlocutory appeal were resolved, the parties filed nine motions for summary judgment on Hypertherm, Inc.'s infringement claims and American Torch Tip Company's ("ATTC") counterclaims and defenses. Hypertherm also moved to strike certain evidence submitted by ATTC in opposition to one of Hypertherm's motions for summary judgment.

On July 24, 2008, the court granted in part and denied in part Hypertherm's motion for summary judgment on ATTC's defense of patent invalidity and on the issue of whether certain ATTC products infringe Hypertherm's patents. Because other pending motions might address issues that were resolved in that order, the court ordered the parties to file a joint notice specifying the parts of the pending motions that have been resolved or changed by the July 24 order. On August 6, 2008, the court granted Hypertherm's motion to strike certain evidence submitted

by ATTC in opposition to another motion for summary judgment.

ATTC has filed a motion for reconsideration of the court's July 24 order granting, in part, Hypertherm's motion for summary judgment. The parties have filed their notice, as ordered in the July 24 order, which in eighteen pages documents extensive disagreement between them as to the effect of the July 24 order. The parties also continue to file replies and surreplies to the pending motions.

Trial of this case is scheduled for the trial period beginning on November 4, 2008. The final pretrial conference is scheduled to be held on October 20, 2008. The number and complexity of the pending motions require more time for their consideration than the existing trial schedule will permit. In addition, decisions on the pending motions may change significantly the claims, counterclaims, and defenses in this case and may also provide incentive to the parties to resolve or limit the issues before trial. Therefore, the trial must be continued and rescheduled.

Conclusion

For the foregoing reasons, the trial scheduled for the trial period beginning on November 4, 2008, is continued and will be rescheduled for February 17, 2009. The final pretrial conference scheduled for October 20, 2008, is rescheduled for February 3, 2009.

SO ORDERED.

/s/JosephA. DiClerio, Jr.
Joseph A. DiClerico, Jr.
United States District Judge

August 13, 2008

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